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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/676,807	10/01/2003	Stephen Alan Smith	3177 P 387	3085

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EXAMINER
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CASTELLANO, STEPHEN J

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 04/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/676,807	<b>Applicant(s)</b> SMITH ET AL.	
	<b>Examiner</b> Stephen J. Castellano	<b>Art Unit</b> 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/17/04, 6/29/04, 9/</u> | 6) <input checked="" type="checkbox"/> Other: <u>ids 9/30/04, 12/9/04.</u>              |

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 8-10, 13-20, 22, 24-28 and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Edwards (D196271) (Edwards).

Edwards discloses a container comprising a sidewall extending between an open top and base, the sidewall has a zig-zag formation of substantially straight lines formed at the approximate mid-height of the cup and extending upwardly and a formation of substantially curved lines forming curved arches formed at the approximate mid-height of the cup and extending upwardly, a number of exterior longitudinal recesses are formed between the straight line zig-zag formation and the curved line formation, an annular shoulder is located at the curved line formation, the shoulder comprises arched portions equal in number to the exterior longitudinal recesses and aligned with these recesses (see Fig. 2, 4 and 5). A beveled portion is located between the curved line formation and the base and is closely adjacent to the base, the beveled portion as best shown in Fig. 1 and 2 appears to be in a number of segments. It can't be determined if these beveled segments are aligned with the longitudinal recesses.

Regarding the strength to weight ratio limitations, it seems apparent that the longitudinal recesses improve strength to weight ratio to a degree of at least 4%, however it can't be determined to what extent more than 4% the strength to weight ratio is improved.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Edwards ('271) in view of Edwards ('305).

271 discloses the invention except for the annular ribs. 305 teaches annular ribs. It would have been obvious to add ribs to add crush resistance to further strengthen the container from inwardly directed radial forces that would tend to crush the container.

Claims 9-12, 21, 27-30, 32-41 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edwards ('271).

Edwards discloses the invention except for the extent of improvement of strength to weight ratio and the equivalence and alignment of longitudinal recesses with the beveled portions. Official notice is taken of the use of well known engineering principles of recess design by increasing thickness, increasing number of recesses, increasing the depth of the recesses will increase strength. It would have been obvious as a matter of engineering optimization of design to improve strength to weight ratio by a factor of as much as 40% through the use of various well known engineering principles. Edwards ('271) teaches the alignment of the recesses and the arched portions. It would have been obvious to modify the beveled portions to be aligned with the longitudinal recesses and thusly equivalent in numbers to the recesses as a matter of providing an aligned design for the purpose of providing an aesthetically pleasing appearance due to the sense of order that aligned structures convey.

Claims 23 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edwards ('271) in view of Ota et al. (Ota).

Edwards discloses the invention except for the annular rib. Ota teaches an annular rib circumferentially aligned with the upper extent of the circumferentially arranged flat walls 3 of the upper body portion, the annular rib includes curved portions aligned with vertically extending recesses (longitudinal recesses as required by claim 42) as shown in Fig. 4 to be the flexible walls 3a when flexed inwardly as shown in phantom. The annular ribs have curved portions which are equal to the number of vertically extending recesses and aligned with one of the recesses. It would have been obvious to add the annular rib to Edwards to define the upper extremity of the recesses and to stabilize the container side wall at the boundary of recesses to inhibit deflection above the rib while allowing deflection and flexing below this rib to absorb inward pressure on the container side wall in localized desired areas as taught by Ota.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-14 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 11/101,932 to Smith et al. (Smith). Although the conflicting claims are not identical, they are not patentably distinct from each other because the limitations of the ('932) Smith application include all of the limitations of these claims and more limitations. It would have been obvious to delete these additional limitations if not desired without defeating the function of the cup in holding fluid.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 15-43 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 11/101,932 to Smith et al. (Smith) in view of Edwards ('271) and Ota et al. ('320) (Ota). The ('932) Smith application claims the invention except for the recesses being arcuately formed, the lower portion between the annular shoulder and base, the annular ribs, two arched portions aligned with the recesses, the recesses being concave and two beveled portions aligned with the recesses. Edwards discloses the recesses being arcuately formed, the lower portion between the annular shoulder and base, the recesses being concave and two beveled portions aligned with the recesses. It would have been obvious to modify the recesses and bevel portions to provide an aesthetically pleasing appearance. Ota discloses the recesses being arcuately formed, the lower portion between the annular shoulder and base, the annular ribs, two arched portions aligned with the recesses, and the recesses being concave. It would have been obvious to modify the arched portions and recesses to provide an aesthetically pleasing appearance.

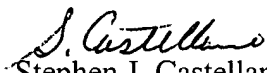
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This is a provisional obviousness-type double patenting rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on Tu-F 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Stephen J. Castellano  
Primary Examiner  
Art Unit 3727

sjc